

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
International Business Reply Service  
Competitive Contracts 3 (MC2011-21)  
Negotiated Service Agreement

Docket No. CP2014-28

PUBLIC REPRESENTATIVE COMMENTS ON THE  
POSTAL SERVICE NOTICE TO FILE AN ADDITIONAL  
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3  
NEGOTIATED SERVICE AGREEMENT

(February 26, 2014)

The Public Representative hereby provides comments pursuant to Order No. 1991.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice to enter into an additional International Business Reply Service (IBRS) competitive contract.<sup>2</sup> IBRS competitive contracts included within the International Businesses Reply Service Competitive Contract 3 product are businesses that sell light-weight articles to consumers in foreign countries and desire to offer their consumers a way to return those articles to the United States for recycling, refurbishment, repair, or other value-added processing. Notice at 4 and 5.

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<sup>1</sup> PRC Order No. 1991, Notice and Order Concerning Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 19, 2014.

<sup>2</sup> Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 14, 2014 (Notice).

Prices and classifications “not of general applicability” for IBRS contracts were previously established by Governors’ Decision No. 08-24.<sup>3</sup> In Order No. 684, the Commission added the International Businesses Reply Service Competitive Contract 3 product to the competitive product list (MC2011-21), and included within that product an IBRS competitive contract (CP2011-59) that would serve as the baseline agreement for functional equivalence comparisons with future agreements.<sup>4</sup> The Commission subsequently determined that IBRS competitive contracts filed in Docket Nos. CP2011-61 and CP2011-70 were functionally equivalent to the baseline agreement and should be included in the International Businesses Reply Service Competitive Contract 3 (MC2011-21) product.<sup>5</sup> The Commission also included additional IBRS competitive contracts filed in Docket Nos. CP2012-16, CP2012-17 and CP2012-18 within the product.<sup>6</sup>

In this proceeding, the Postal Service requests that the Commission add the instant contract to the IBRS Competitive Contract 3 product based on its functional equivalence to the baseline contract in Docket Nos. MC2011-21 and CP2011-59. Notice at 6. The instant contract is also the successor to, and is with the same customer as, the contract that was the subject of Docket No. CP2013-50. The Postal Service intends for the contract that is the subject of this docket to become effective on March 1, 2014, the day after the contract that is the subject of Docket No. CP2013-50 expires. Notice at 3.

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<sup>3</sup> See Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors’ Decision, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008.

<sup>4</sup> See PRC Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011.

<sup>5</sup> See PRC Order No. 693, Order Approving an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket No. CP2011-61, March 11, 2011; *see also* PRC Order No. 844, Order Approving an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket No. CP2011-70, September 9, 2011.

<sup>6</sup> See PRC Order No. 1260, Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, Docket No. CP2012-16, February 27, 2012; *See also* PRC Order No. 1280, Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, Docket No. CP2012-17, March 9, 2012; PRC Order No. 1298, Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, Docket No. CP2012-18, March 27, 2012.

## COMMENTS

The Public Representative has reviewed the negotiated contract and supporting financial model filed under seal that accompanies the Postal Service's Notice. Based upon that review, the Public Representative concludes that the instant contract is functionally equivalent to the baseline agreement. In addition, it appears the negotiated prices in the instant contract should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633.

*Functional Equivalence.* The Postal Service asserts that the instant contract is functionally equivalent to the IBRS 3 baseline contract "in that it shares similar cost and market characteristics . . . [and the] functional terms of the contract [ ] and the functional terms of the IBRS 3 baseline agreement are the same." *Id.* at 4. However, the Postal Service identifies what it considers to be "minor differences" between the instant contract and the IBRS 3 baseline contract, including: a revision to Article 15, which states that "the Postal Service may be required to file information in connection with the contract (including revenue, cost, or volume data) in other Commission dockets, including PRC Docket Numbers, ACR 2012, ACR 2013, and/or ACR 2014."; and an additional Article 30, which concerns Intellectual Property, Co-Branding, and Licensing. Notice at 5. The Postal Service maintains that these differences do not affect either the fundamental service that the Postal Service is offering nor the fundamental structure of the agreement. *Id.* at 5. The Public Representative agrees and concludes that the instant contract is functionally equivalent to the baseline agreement.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Notice, it appears the negotiate prices in the instant contract should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a).

The Public Representative respectfully submits these comments for the Commission's consideration.

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